

NOTICE OF PROPOSED ACTION

**FOR ADOPTION OF AMENDMENTS
TO THE ENERGY COMMISSION'S
POWER PLANT SITING REGULATIONS**

Docket No. 02-SIT-1

August 2002

The California Energy Commission ("Commission") proposes to amend its regulations for Applications for Certification in Title 20, California Code of Regulations. The proposed amendments are authorized of sections 25213, 25218(e), 25539, and 25541.5 of the Public Resources Code. These regulations would implement, interpret, and make specific various sections of the Warren-Alquist Act (Public Resources Code, section 25000 et seq.) and one section of the California Environmental Quality Act. (Public Resources Code, section 21000 et seq.)

NOTICE THAT A PUBLIC HEARING IS SCHEDULED:

The possible adoption of the proposed amendments has been scheduled for a public hearing as follows:

Commission Business Meeting
October 23, 2002, beginning at 10:00 a.m.
California Energy Commission
Hearing Room A
1516 9th Street
Sacramento, CA 95814

Hearing Room A is wheelchair-accessible.

ORAL AND WRITTEN STATEMENTS

Interested persons wishing to address the Commission about the proposed amendments at the hearing must submit written comments to the Commission on or prior to October 15, 2002 by mailing them to:

Docket Unit
California Energy Commission
Docket No. 02-SIT-1
1516 9th Street, MS-4

Sacramento, CA 95814

Or e-mailing them to: DOCKET@energy.state.ca.us

Or faxing them to Dockets at (916) 654-4354

All written comments must be identified with "Docket No. 02-SIT-1."

COPIES OF THE INITIAL STATEMENT OF REASONS AND THE TEXT

The Commission has prepared an initial statement of reasons for the proposed regulations. To obtain a copy of the initial statement of reasons or the express terms of the proposed amendments, please contact Richard Buell at (916) 653-1614 or by e-mail at rbuell@energy.state.ca.us. Additionally, the Commission has available all the information upon which the proposed regulations are based; to obtain copies, please send a request to the Docket Unit at the above address or call (916) 654-5076.

INTERNET ACCESS

The Energy Commission's website will contain materials regarding this rulemaking proceeding. It can be accessed at the following address:
<http://www.energy.ca.gov/siting/rulemaking/>

COPY OF THE FINAL STATEMENT OF REASONS

At the conclusion of the rulemaking, persons may obtain a copy of the final statement of reasons by contacting Richard Buell at (916) 653-1614 or by e-mail at rbuell@energy.state.ca.us.

POSSIBLE CHANGES

If the Commission considers changes to the proposed regulations pursuant to Government Code section 11346.8, and the changes are sufficiently related to the original text and within the scope of this Notice, a full copy of the text will be available for review at least 15 days prior to the date on which the Commission adopts or amends the resulting regulations.

PUBLIC ADVISER

The Commission's Public Adviser's Office is available to assist any person who wishes to participate in this proceeding. For assistance from the Public Adviser's Office, please call (916)654-4489 or toll-free in California at

(800)822-6228.

CONTACT PERSONS

Inquiries concerning all aspects of the amendment process, including the substance of the proposed regulations, should be directed to Richard Buell, Project Manager, at (916) 653-1614 or by e-mail at rbuell@energy.state.ca.us. Mr. Buell's designated backup contact person is Chris Tooker, who can be reached at (916) 653-1634.

INFORMATIVE DIGEST

The Warren-Alquist State Energy Resources Conservation and Development Act (Public Resources Code Section 25000 et seq.) created the Commission and vested it with a wide range of duties and responsibilities related to the development and conservation of energy resources in California. Included in the Commission's responsibilities is ensuring sufficient electricity to meet California's needs through the siting of thermal electric generating facilities of 50 megawatts (MW) or greater generating capacity.

The proposed amendments would clarify and update the siting process to ensure that these responsibilities are carried out by making the following changes:

Adding section 1237 to establish a separate post-certification complaint process

Existing regulations, sections 1230 through 1236, establish one process to handle all complaints. The proposed amendment would add a new section after these sections to establish a completely separate procedure for handling complaints exclusively for matters related to power plant licensing by the Commission. The proposed addition of section 1237 would specify the required contents of a complaint. It would then give Commission staff 30 days to investigate a complaint and file a report detailing staff's conclusions. It would also allow written comments on either the complaint or the staff report to be submitted within 14 days after issuance of the staff report. The proposed amendments would then give the assigned committee 30 days from issuance of the staff report to dismiss the complaint for insufficiency or lack of merit, issue a written decision on the complaint, or conduct hearings to further investigate the matter and then issue a written decision. The proposed amendments would also set forth a process to appeal the committee's decision.

A reference to this new section would be added to section

1231. The amendments would also clarify that a complaint could be dismissed under section 1232 for lack of merit. Reference in sections 1231 and 1232 to Public Resources Code sections 25451 and 25452 would be deleted because these sections have been repealed.

Changing the construction deadline under section 1720.3 and instituting a deadline for start of operation

Existing section 1720.3 sets forth a deadline of five years after the effective date of the decision for commencement of construction. The proposed amendment to section 1720.3 would require the installation of concrete foundations for major project structures within two years after the effective date of the decision with the possibility of extending this deadline an additional year. The one-year extension would be predicated on a showing by the project owner that there is good cause to extend the deadline and that the project will continue to conform with all applicable laws, ordinances, regulations and standards (LORS) and will not result in any significant adverse impacts to the environment or to congestion in the electrical system.

The proposed amendment would authorize the Commission to amend the project's conditions of certification to ensure conformance with LORS or to ensure that all significant adverse impacts are mitigated. The proposed amendment would also add an operation deadline of two years from the installation of concrete foundations for major structures and would authorize the Commission to extend this deadline based on good cause.

Changing section 1768 to clarify where a notice of decision must be filed and to make consistent with the Public Resources Code requirements

Existing section 1768 requires the Commission to file a notice of decision on a power plant application for certification with both the Secretary of the Resources Agency and the Governor's Office of Planning and Research.

Public Resources Code section 21080.5(d)(2)(E), which applies to the Energy Commission, only requires a certified regulatory agency to file its notice of decision with the Secretary of Resources. The proposed amendment to section 1768 would clarify that the notice of decision need only be filed with the Secretary of the Resources Agency.

Changing section 1769 to clarify under what circumstances a modification to an existing license will be allowed

Existing section 1769 allows a modification of a power plant licensed pursuant to Public Resources Code section 25500 et seq. to be approved by the Commission if, among other things, the change is based on new information not available to the parties prior to Commission certification.

The proposed amendment to section 1769 would clarify that in order to approve a modification based on new information, the commission must find that the new information was not known or could not have been known with the exercise of reasonable diligence prior to the Commission decision.

NO INCORPORATION BY REFERENCE

The proposed regulations would not incorporate any documents by reference.

SMALL BUSINESS IMPACTS

The Commission concludes that the proposed regulations would not affect small business. The proposed regulations would be purely procedural and timing clarifications and would impose no additional requirements upon any small business. Improvements and clarifications to the Commission's siting process would benefit the entire state, including small business, by helping to ensure an adequate supply of electricity.

LOCAL MANDATE DETERMINATION

If adopted, the proposed regulations would not impose a mandate on local agencies or school districts.

COST/SAVINGS ESTIMATE

There would be no costs or savings to any state agency, and no costs to any local agencies or school districts that are required to be reimbursed under Government Code section 17500 et seq., resulting from the proposed regulations. Additionally, there would be no cost or savings in federal funding to the state as a result of these amendments. There would be no other non-discretionary cost or savings imposed on local agencies.

INITIAL DETERMINATION - ECONOMIC IMPACT ON BUSINESSES

The California Energy Commission hereby declares that it has

made an initial determination that the proposed changes to the siting regulations will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

The Commission and its staff are unaware of any legitimate cause and effect relationship between the proposed procedural and timing clarifications and a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

This initial determination is based upon the following facts:(1) the proposed regulations would mainly clarify Energy Commission procedures, and result in no additional burdens, duties, or costs upon power plant applicants; and (2) the Commission and its staff are unaware of any legitimate cause and effect relationship between the proposed procedural clarifications and amendments and a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

The Energy Commission believes the proposed regulations would assist in the prompt licensing and monitoring of power plants in accordance with the Commission's statutory responsibilities.

ASSESSMENT REGARDING JOBS AND BUSINESSES

The Commission's assessment is that the proposed amendments to the siting regulations would have no effect on the creation or elimination of California jobs and no effect on the creation of new business or the elimination or expansion of existing business within California. The number of power plants applied for, licensed, and then built would not be foreseeably changed by the proposed regulations.

The proposed regulations would require no new reports.

POTENTIAL FOR ADVERSE IMPACTS ON BUSINESS AND INDIVIDUALS

The Commission's assessment is that the proposed amendments to the siting regulations would have no potential for adverse economic impact on California business enterprises and individuals.

The Commission's further assessment is that the proposed amendments would avoid the imposition of unnecessary or

unreasonable regulations or reporting, record keeping, or compliance requirements.

CONSIDERATION OF ALTERNATIVE PROPOSALS

Before adopting the proposed amendments, the Commission must determine that no reasonable alternative considered by it, or that has otherwise been identified and brought to the attention of the Commission, would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action. To date the Commission is not aware of any alternatives that would be more effective or less burdensome than the proposed regulations.

IMPACT ON HOUSING COSTS

If adopted, the proposed regulations would not have an effect on housing costs.

COST IMPACT ON PRIVATE PERSONS AND BUSINESSES

The Energy Commission is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

RELATIONSHIP TO FEDERAL REGULATIONS

There are no comparable federal regulations or statutes governing the Energy Commission's procedural requirements for licensing power plants in California. Furthermore, no federally mandated regulation or amendment is being proposed.

STATUTORY AUTHORITY AND REFERENCE

Authority: Sections 25213, 25218(e), 25539, and 25541.5 Public Resources Code.

Reference: Section 11180 Government Code; Sections 21080.5, 25210, 25216.5, 25362, 25500, 25519, 25523, 25532, 25534, 25534.1, 25541.5, 25900, and 25967, Public Resources Code.

CALIFORNIA ENERGY COMMISSION

Date: _____

ROBERT PERNELL
Commissioner and Presiding Member,
Energy Facility Siting and Environmental
Committee